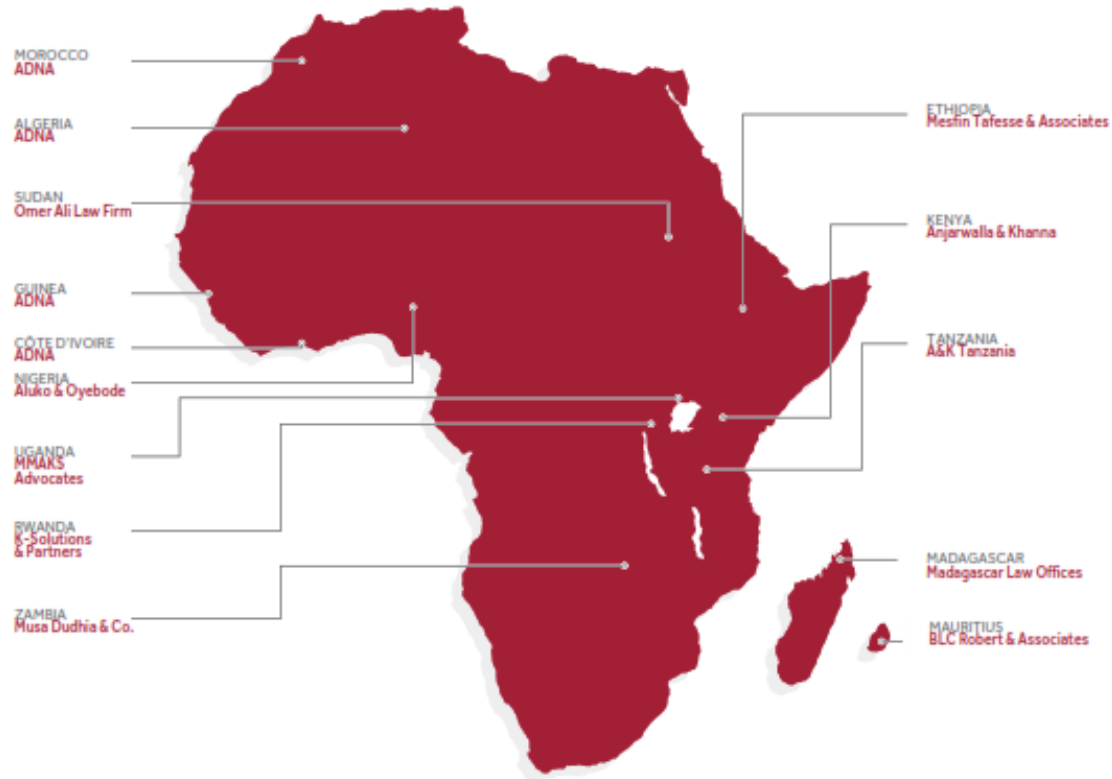




CHARTING EAST AFRICA'S PLASTIC LANDSCAPE: THE DRAFT EAST AFRICAN COMMUNITY (PROHIBITION OF MANUFACTURING, IMPORTATION, USE AND SALE OF SINGLE USE) PLASTICS BILL, 2023

**Presentation by Carlotta Dal Lago
Head of Business Development ALN**

ALN AT A GLANCE



Leading African firm and the largest law firm outside of South Africa.

Founding member and driving force of ALN, the leading pan-African legal alliance in fourteen countries

Winner: Five-time winner of African Law Firm of the Year Award since launch of the awards in 2013

Top Ranked Firm in all relevant directories.

Chambers Global has consistently ranked the ALN alliance as Band 1 in the “Leading Regional Law Firm Networks – Africa-wide” category

Our Values: Integrity, Intellectual Rigor and Excellence.

MEET THE TEAM



Rosa Nduati-Mutero
Co-Managing Partner, ALN Kenya



Faith Macharia-Okaalo
Partner, ALN Kenya



Carlotta Dal Lago
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Outline of Presentation

Overview of the plastic landscape in East Africa

Harmonized Legislation on Plastics as a Key Tool for Sustainable Solutions

Legal Foundations of the EAC Single Use Plastics Bill,2023

The East Africa Community Single Use Plastics Bill,2023

Potential Risks: The Perils of Unverified Plastic Alternatives



CURRENT APPROACHES IN EAST AFRICA: PLASTIC BANS



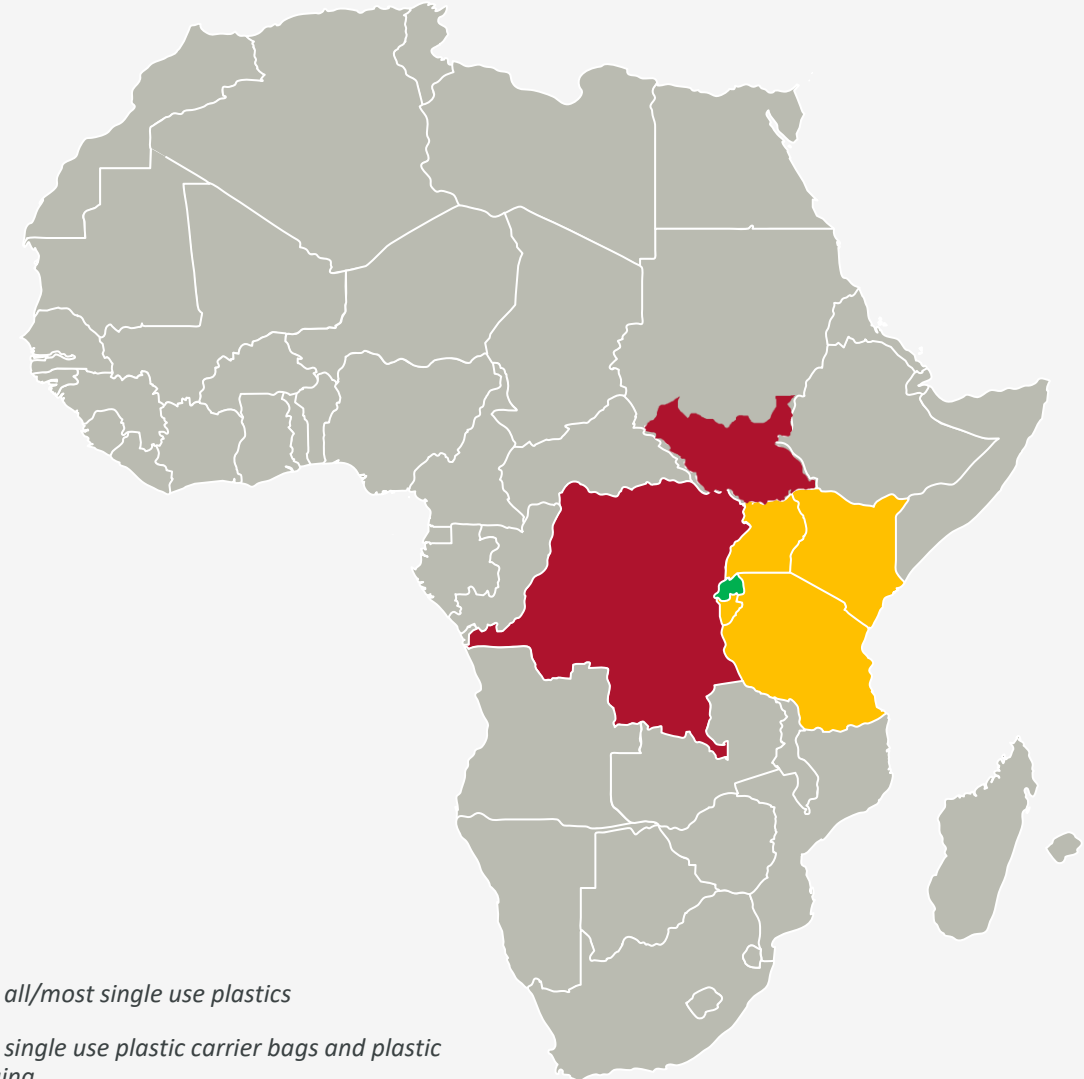
- In 2008, the Rwanda instituted a law **prohibiting the manufacturing, importation, use and sale of polythene bags in Rwanda.**
- The scope of the ban was **extended** in 2019 to **prohibit the manufacturing, importation, use and sale of plastic carry bags and single-use plastic items.**



- The National Environment Act, 2019 bans the **importation, exportation, local manufacture, use or re-use** of certain categories of plastic carrier bags or plastic products **made of polymers of ethene (polyethene) and propylene (polypropylene).**
- The above excludes products that are **above 30 microns.**



- In 2019, Tanzania issued a ban on plastic bags except for certain packaging materials.
- The **resurgence of plastic carrier bags** has however meant that there is a need **to reevaluate the ban and the penalties.**



- *Ban on all/most single use plastics*
- *Ban on single use plastic carrier bags and plastic packaging*
- *Ban on single use plastic carrier bags Difficulty in implementation*
- *African Countries outside the East Africa Community*



CURRENT APPROACHES IN EAST AFRICA: PLASTIC BANS



- Former President Pierre Nkurunziza, in 2018 signed a decree banning the **manufacturing, importation, storage, sale and use of all plastic bags and other plastic packages.**
- Enforcement of this ban was expected to begin in February 2020.

- In 2017, by Gazette Notice No. 2334 and 2356, Kenya **banned the use, manufacture and importation of plastic bags used for commercial and household packaging.**
- Kenya, in 2020, **has also banned single-use plastics from protected natural areas** (such as parks and forests).



- The Government of South Sudan banned the importation and use of plastic bags in the country in **2015**. The ban was implemented in **December of 2017**.
- Reports however indicate that there has been rampant pollution by plastic bags and other single-use plastics.

- A Decree in 2018 banned the **production, importation, marketing and use of plastic bags, films and other plastic packaging.**
- Reports however indicate that despite the existence of policy, there is little enforcement, as goods with plastic packaging are imported with little restriction.



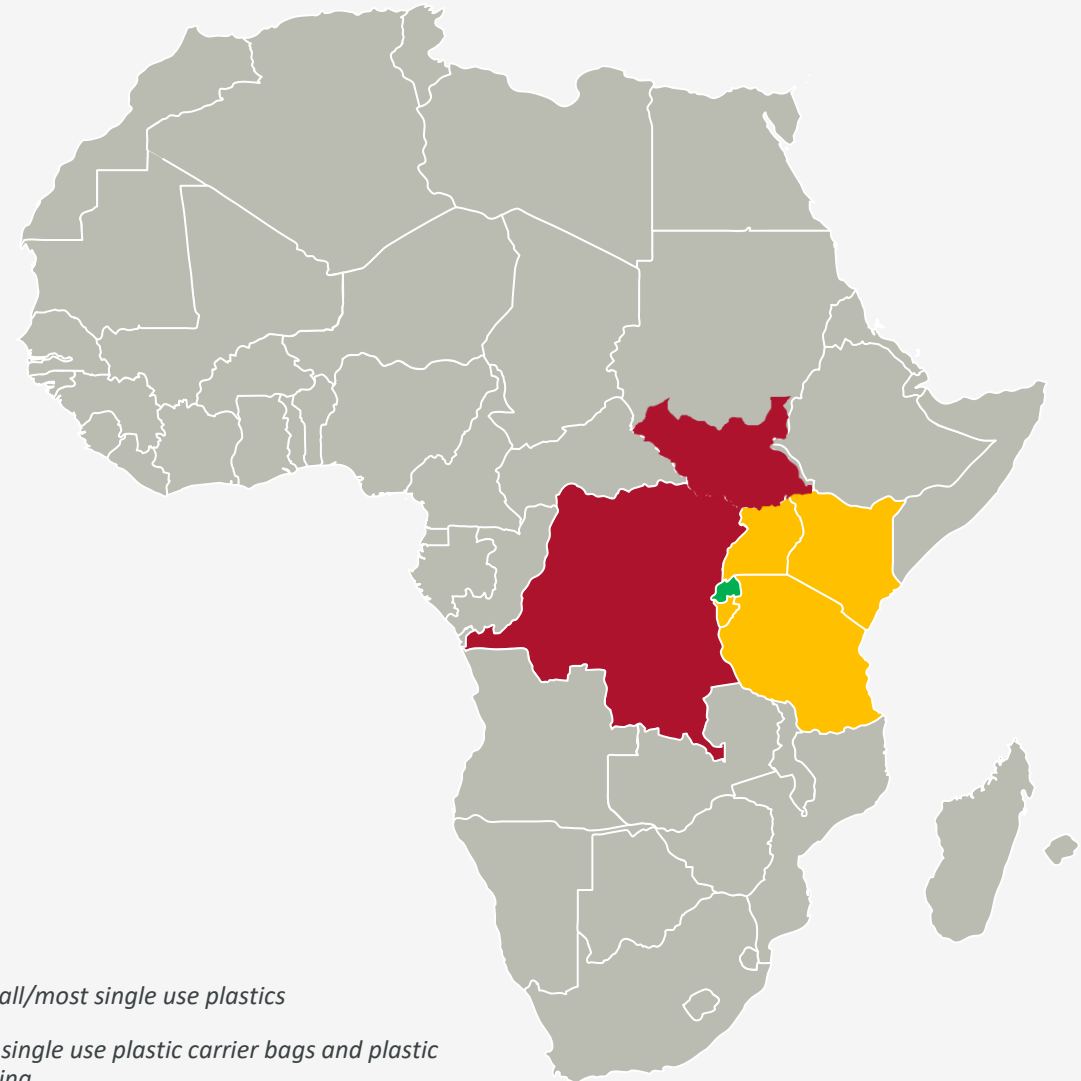
Ban on all/most single use plastics



Ban on single use plastic carrier bags and plastic packaging



Ban on single use plastic carrier bags Difficulty in implementation



CURRENT APPROACHES IN EAST AFRICA:

COUNTRY	Activity Banned	Item Banned
Rwanda	manufacturing, importation, use and sale of polythene bags,	plastic carry bags single use plastic items
Uganda	importation, exportation, local manufacture, use or re-use	plastic carrier bags plastic products made of polymers of ethene (polyethene) and propylene (polypropylene).
Tanzania	General ban	plastic bags except for certain packaging materials.
Burundi	manufacturing, importation, storage, sale and use of	all plastic bags and other plastic packages
Kenya	use, manufacture and importation	plastic bags used for commercial and household packaging. all single-use plastics from protected natural areas (such as parks and forests)
South Sudan	importation and use	plastic bags
D.R.C	production, importation, marketing and use	plastic bags, films and other plastic packaging.

TAX INCENTIVES AND FINES WITHIN PARTNER STATES

COUNTRY	TAX INCENTIVES/BURDEN	FINES
<p>Kenya</p>	<p>In the 2019/2020 budget Kenya provided an exemption from the 16% VAT for all services included in plastic recycling plants and costs of machinery and equipment to build plastic recycling plants. This exemption still exists to date.</p> <p>In the 2022/2023 budget there are no additional tax incentives provided.</p>	<p>Pursuant to Section 144 of the Environment Management and Coordination Act (EMCA), any person who manufactures, imports, sells, distributes or uses single use plastics that are banned contravenes the provision of the gazette notice Gazette Notice No. 2334 and 2356 shall be liable to:</p> <ul style="list-style-type: none"> • a fine not less than two (2) million Kenya Shilling and not more than four (4) million Kenya Shillings (equivalent to approx. USD 13,197- 26,394) or • imprisonment of a term of not less than one (1) year but not more than four (4) years; or • to both the fine and imprisonment
<p>Uganda</p>	<p>The Excise Duty (Amendment) Bill 2022 sought to impose a 40% or USHS. 4,000 excise duty on each kilogramme on sacks and bags of polymers and other plastics. The Bill was rejected. As of now there are no tax burdens for importation, use of plastics or tax incentives for the use of alternatives to plastics.</p>	<p>The Finance (Permitted Plastic Bags and Other Plastics for Exceptional Use) Regulations, 2010 provides that the penalty for manufacturing, importing, selling, distributing or otherwise dealing in plastic bags and prohibited plastics will be liable for an offence that is penalized by:</p> <ul style="list-style-type: none"> • A fine of one hundred and twenty thousand Ugandan Shillings (equivalent to appx. USD 32) and an additional penalty of seventy thousand Ugandan Shillings (equivalent to appx. USD 18.60) for each day or part of a day during which the offence has continued.

TAX INCENTIVES AND FINES WITHIN PARTNER STATES

COUNTRY	TAX INCENTIVES/BURDEN	FINES
United Republic of Tanzania	None	<p>The penalties prescribed for the importation, exportation, manufacture, sale, storage, supply and use of plastic carrier bags in mainland Tanzania range from:</p> <ul style="list-style-type: none"> • A fine of not less than TSH 30,000 (equivalent to appx. USD 12), TSH 200,000 (equivalent to appx. USD 80), 20 Million (equivalent to appx. USD 7,959) to TSH 1 Billion (equivalent to appx. USD 397,931); or • imprisonment.
Rwanda	<p>In the 2022/2023 financial budget, Rwanda unveiled an increase in import duty from 25% to 35% on handbags that have outer surface of sheeting.</p>	<ul style="list-style-type: none"> • The administrative sanctions for manufacturing, importation, use and sale of Plastic /Carry Single-Use Plastic Items prescribed under the LAW N° 17/2019 OF 10/08/2019 are : • Manufacturing of plastic carry bags and single-use plastics- FRW 10,000,000 (equivalent to appx. USD 8,158). • Importation of plastic carry bags and single-use plastics- 10 times the value of the imported items. • Wholesale plastic carry bags and single-use plastics- FRW 700,000 (equivalent to appx. USD 571). • Retailing of plastic carry bags and single-use plastics- FRW 300,000 (equivalent to appx. USD 245). • Piling or disposing of plastic carry bag waste and other single-use plastics- FRW 50,000 (equivalent to appx. USD 40).

Checklist of EAC Plastics Landscape

Country	Mode of Plastic regulation	Tax Incentives	Fines
Burundi	✓	✗	✗
Democratic Republic of Congo	✓	✗	✗
Kenya	✓	✓	✓
Rwanda	✓	✓	✓
South Sudan	✓	✗	✗
Tanzania	✓	✗	✓
Uganda	✓	✓	✓

Harmonized Legislation on Plastics as a Key Tool for Sustainable Solutions

Diverse National Efforts

The laws/ bans enacted by different EAC states signify tailored approaches addressing unique environmental, economic, and social needs of EAC states

Plastic Pollution Transcends Borders

Regional environmental impact transcends national boundaries

Need for a unified approach to tackle shared challenges

Learning from the success of the East Africa Customs Management Act, 2004 (EACMA)

EACMA's harmonized customs framework provides consistency, predictability and facilitates collaboration all customs related matters in the EAC region

Benefits of harmonizing Plastic Legislation

Simplifies compliance for businesses operating across multiple countries

Enables regional cooperation in waste management and recycling

Strengthens East Africa's collective voice in global environmental policies



**THE DRAFT EAST AFRICAN COMMUNITY (PROHIBITION OF
MANUFACTURING, IMPORTATION, USE AND SALE OF SINGLE USE)
PLASTICS BILL, 2023**

EAC Single-Use Plastics Bill: Premise Rooted in the EAC Treaty and the Global Plastics Treaty

The EAC Single-Use Plastics Bill actualizes the environmental commitments of the EAC Treaty and the Global Plastics Treaty by promoting joint environmental stewardship, legal harmonization, and sustainable development across Partner States.

THE EAC TREATY

Article 112 : Partner States agree to create a unified policy to preserve ecosystems and prevent degradation. Collaboration in managing air, land, and water pollution caused by developmental activities.

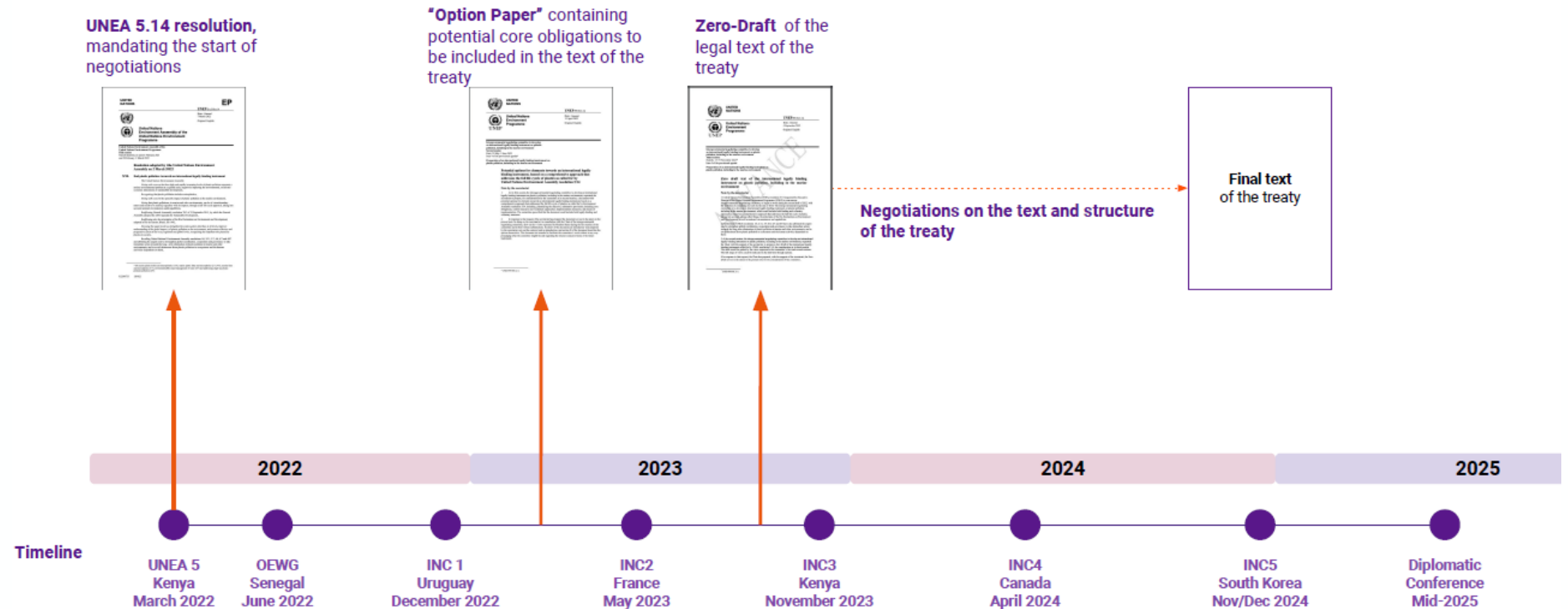
Article 113 : Partner States commit to preventing illegal dumping of toxic and hazardous materials within the region and develop a consistent legal framework for managing the movement, use, and disposal of toxic substances.

EAC Single-Use Plastics Bill: A Regional Step toward actualizing Global Plastic Treaty

GLOBAL PLASTICS TREATY TIMELINE



The negotiation process should end towards the end of 2024



GLOBAL PLASTICS TREATY



In March 2022, a momentous step was taken on the global stage as the UN Environment Assembly embraced a groundbreaking resolution aimed at crafting a comprehensive international treaty on plastics.



With approximately 11 million tonnes of plastic inundating the world's oceans annually, as reported by the UN Environment Programme, the urgency for concerted action has never been clearer.



This proposed treaty presents a rare, once-in-a-generation opportunity for UN member states to forge a legally binding policy framework.



Such a framework holds the promise of providing regulatory certainty, empowering entities throughout the plastics value chain to propel forward the transformative systemic changes essential to combat the crisis on a truly global scale.

EAC Single-Use Plastics Bill: A Regional Step Toward Actualizing Global Plastic Treaty



- The Draft Zero of the Global Plastics Treaty provides (as an option) the application of necessary measures and reasonable approaches by Party States.
- The Draft SUP Bill provides for these measures and approaches.
- The Draft SUP Bill also provides means of ensuring economic development.
- The Draft Zero of the Global Plastics Treaty does not specify the collaborative approaches between the Party States.
- The Draft SUP Bill provides for the collaborative approaches such as transboundary enforcement to ensure that the EAC Community is aligned.
- The Draft SUP Bill provides a clear enforcement mechanism that is to be adopted by the Partner States.
- This is a feature that is not present in the Draft Zero of the Global Plastics Treaty which does not specify the penalties or enforcement mechanism to be applied.
- The Draft Zero of the Global Plastics Treaty is anticipated to be implemented in 2025 following the completion of the INC negotiations.
- We anticipate that the Draft SUP Bill will be implemented well before the Draft Zero of the Global Plastics Treaty.

SALIENT FEATURES OF THE DRAFT SINGLE-USE PLASTICS BILL

Prohibition of the manufacture, import, sale, use, piling and disposal

Clearly visible and legible marking on the packaging

Recycling, segregation and collection mechanism

Permitted uses for single use plastics

Sustainable reduction of consumption

Emphasis on awareness and education

Incentives

OVERVIEW OF THE EAC SINGLE-USE PLASTICS BILL

General Overview

- Salient Features of the Draft Single-Use Plastics Bill
- Part 1: Definitions and Interpretations
- Part 2: Regulation of Single-Use Plastics and Exemptions
- Part 3: Consumption Reduction
- Part 4: Awareness Raising Measures and Incentives
- Part 5: Sanctions and Enforcement
- Part 6: Miscellaneous

KEY DEFINITIONS

“**problematic plastics**” means plastic packaging items, components, or materials where consumption could be avoided through elimination, reuse or replacement and items that, post consumption, commonly do not enter the recycling and/or composting systems, or where they do, are detrimental to the recycling or composting system due to their format, composition, or size;

‘**single-use plastic product**’ means a disposable plastic item that is made wholly or partly from plastic designed to be used once before it is discarded or recycled;

‘**Council**’ means the Council of Ministers of the East African Community established by Article 9 of the Treaty establishing the EAC

“**scientific purposes**” means diagnostic, educational or research purposes;



PART 1: DEFINITIONS AND INTERPRETATION

PART TWO: REGULATION OF SINGLE-USE PLASTICS AND EXEMPTIONS



Prohibition of manufacture, import, sale or use of single-use plastics



Exempted/ Permitted uses



Waste Management Provisions



Collection measures of single-use plastics



Transitional provisions and disposal of existing stock

SECTION 6: PROHIBITIONS OF CERTAIN SINGLE-USE PLASTICS

Section 6 mandates Partner States to prohibit:

- Production, manufacture, distribution, importation, sell, use, export, or sell any SUP product listed in the **First Schedule**.
- Piling and Disposal of SUPs in public places.
- Transboundary Movement of SUP products.
- Eliminate illegal trade in SUP products and the illegal trade in waste originating from these SUPs.



Rationale:

- Promote the adoption of more sustainable and eco-friendly alternatives in Partner States
- Encourage responsible waste disposal practices
- Effects of pollution do not recognize political boundaries
- Foster a shared responsibility in addressing a common environmental challenge

FIRST SCHEDULE: PROHIBITED SINGLE-USE PLASTICS

- Polythene and plastic bags
- Cutlery (forks, knives, spoons, chopsticks);
- Plates and bowls;
- Plastic straws;
- Cups for beverages, including their covers and lids;
- Crisp packets, sweet and chocolate wrappers, bread bags and confectionary wrappers; and
- Sanitary items such as dental floss and plastic cotton bud sticks.



**SECOND SCHEDULE:
EXEMPTED/PERMITTED
USES**

SECTION 6 RESTRICTIONS DO NOT APPLY TO



Medical purposes



Forensic purposes



Scientific purposes (i.e., diagnostic, educational or research purposes)



Industrial purposes



Agriculture and forestry purposes



Printing houses purposes



Construction industry purposes.

WASTE MANAGEMENT OF SINGLE USE PLASTICS

We note that the most Partner States have already established Waste Management Laws in place.

These laws refer to the mechanism for waste management generally and does not specifically address the issue of single use plastics.

The Draft SUP Bill addresses this issue through its waste management provisions which mandate Partner States to:

- **Manage SUP waste** in a safe and environmentally sound manner **throughout their life cycle**
- Take the necessary measures to **prevent dumping** in all types of water bodies
- Take additional measures to create incentives/measures to **promote waste management systems***
- **Report quarterly** on the steps and measures taken towards waste management



Rationale:

- Supplement the already existing waste management laws.
- Address the environmental and health challenges associated with SUP waste.
- Safeguard water bodies by reducing exposure to harmful SUPs.
- Through reporting, one can monitor progress and compliance with these measures.

LABELLING PROVISIONS



These provisions mandate Partner States to ensure that SUPs bear a **clearly visible and legible marking on its packaging or on the product itself** containing information on:

- appropriate waste management options
- waste disposal means that are not appropriate for that product
- presence of plastics in the product
- resulting negative impact of inappropriate means of waste disposal on the environment.

AUTHORIZATION FOR THE USE OF SINGLE USE PLASTICS

- Partner States are required to obtain written authorization from the relevant environmental authorities when they intend to engage in activities related to specific single-use plastic products listed in the First Schedule for purposes specified in the Second Schedule.
- The provision mandates that applicants provide certain information when applying for this authorization, including:
 - Reasons for the Application
 - Quantities and Estimated Period
 - Waste Management Plan

AUTHORIZED



- The Draft Bill recognizes the need to ensure a smooth and equitable transition for populations and businesses affected by the ban on SUPs and calls upon Partner States to:
 - Support impacted/ affected communities e.g., creating income opportunities, workforce training and social programs tailored to their needs and priorities.
 - Skill and Job development within the SUP value chain, including recycling and waste management capacity building
 - Incentivizing the manufacturing of affordable plastic alternatives
 - Promoting labour welfare practices for waste management workers and integrate workers in informal and cooperative settings into a safe plastics value chain.
 - Extended Producer Responsibility: Partner States are mandated to require a portion of fees collected through extended producer responsibility schemes and reinvest the fees collected to improve infrastructure and enhance the livelihoods and skills of waste sector workers.

TRANSITIONAL PROVISIONS:

PART 3: CONSUMPTION REDUCTION OF SINGLE USE PLASTICS

Part 3 mandates Partner States to:

- Report annual production and import of single-use and problematic plastics.
- Report measures taken to reduce consumption of single use and problematic plastics, including national consumption reduction targets, reusable alternatives, and marketing restrictions.
- Submit this report to the East African Community Council of Ministers.



Rationale:

- One of the primary means to gauge the effectiveness of a legal provision is typically through the mandatory submission of reports that assess and document progress or the lack thereof.

PART 4: AWARENESS RAISING MEASURES AND INCENTIVES

Part 4:

Section 23 provides that Partner States must raise awareness on the effects of plastic pollution on the environment and the availability of alternatives to plastic.

Section 24 and 25 states that Partner States should provide regulatory and economic incentives to activities aimed at controlling pollution caused by single-use plastics.

Section 26 provides that each Partner State shall submit to the Council a detailed outline of the incentives it intends to put in place to promote eradication of single-use plastics.



Rationale:

- Raising awareness and adequate financing are crucial for the efficient management of single use plastics.

PART 5: SANCTIONS AND ENFORCEMENT

- *Section 27 and 28* of the Draft SUP Bill provides for enforcement of the Draft Bill. The environmental authority of each Partner State is in charge of implementing this Bill. The environmental authorities are allowed to develop joint assistance for effective co-ordination.
- *Section 29 and 30* of the Draft SUP Bill allows for environmental authorities in each partner states to impose monetary penalties, stop occurrence of the offence and non issuance of compliance notice.
- General Penalties (i.e., the penalties for offences that have not been prescribed):



For Individuals:	For Entities
<ul style="list-style-type: none">• an administrative fine of up to USD 5,000;• imprisonment up to 6 months; or• a combination of both.	<ul style="list-style-type: none">• fines of up to 5% of their preceding year's annual turnover.• If a body corporate is involved in an offense, and it can be linked to the actions or negligence of its directors, managers, secretaries, or similar officers, they will be held accountable.

- Where it is established that the individual is a repeat offender, **the penalty against such a person shall be doubled.**

PART 5: SANCTIONS AND ENFORCEMENT



- The penalties for manufacturing, selling, importing and using SUPs (Section 6(1)) include:

For Individuals:	For Entities
<ul style="list-style-type: none">• a maximum administrative fine of USD 40,000;• imprisonment up to 12 months; or• a combination of both.	<ul style="list-style-type: none">• fines of up to 10% of their preceding year's annual turnover.

- The penalties for pilling or disposing of any SUP in a public place (Section 6(2)) are:

For Individuals:	For Entities
<ul style="list-style-type: none">• an administrative fine not exceeding USD 20,000;• imprisonment up to 12 months; or• a combination of both.	<ul style="list-style-type: none">• fines of up to 10% of their preceding year's annual turnover.• the offending individual may be required to remove waste and repair damages caused.

PART 5: SUMMARY COMPLIANCE NOTICE AND CERTIFICATE OF COMPLIANCE

1. The relevant environmental authority can issue a compliance notice to individuals or corporations who violate Section 6(1) or Section 6(2) of the Act. This notice prohibits specific activities until the necessary corrective actions are taken.
2. A compliance notice contains information about the reasons for its issuance, the required corrective actions, the right to appeal, and the consequences of non-compliance.
3. Individuals or corporations receiving a compliance notice can appeal the decision within the courts or tribunals of the relevant Partner States based on various grounds, such as errors in fact or law, unreasonableness, or other valid reasons.
4. After complying with a compliance notice, the environmental authority issues a completion certificate, rendering the notice ineffective. Individuals can request this certificate, and the authority must make a decision within 14 days.
5. Failure to comply with a compliance notice results in an offense with penalties, including fines, imprisonment, and fines based on a percentage of an entity's annual turnover. The Act takes precedence over other related laws, and the Council can create regulations to enforce its provisions.

PART 5 DRAFT SUP BILL:

THE COMPLIANCE NOTICE

- Section 32 and Section 33

APPEAL AGAINST COMPLIANCE NOTICES

- Section 34 and Section 35

COMPLETION CERTIFICATE

- Section 36

APPEALS AGAINST DECISIONS NOT TO ISSUE A COMPLETION NOTICE

- Section 37

FAILURE TO COMPLY WITH A COMPLIANCE NOTICE

- Section 38

POWER OF SEIZURE

- Section 39

POWER OF ENTRY AND EXAMINATION

- Section 40

PART 6: MEASURES TO RAISE AWARENESS AND INCENTIVES

Section 42 Draft SUP Bill

The Act takes precedence over other laws in Partner States.

Section 43 Draft SUP Bill

The Council may make regulations generally giving effect to the provisions of the Act.

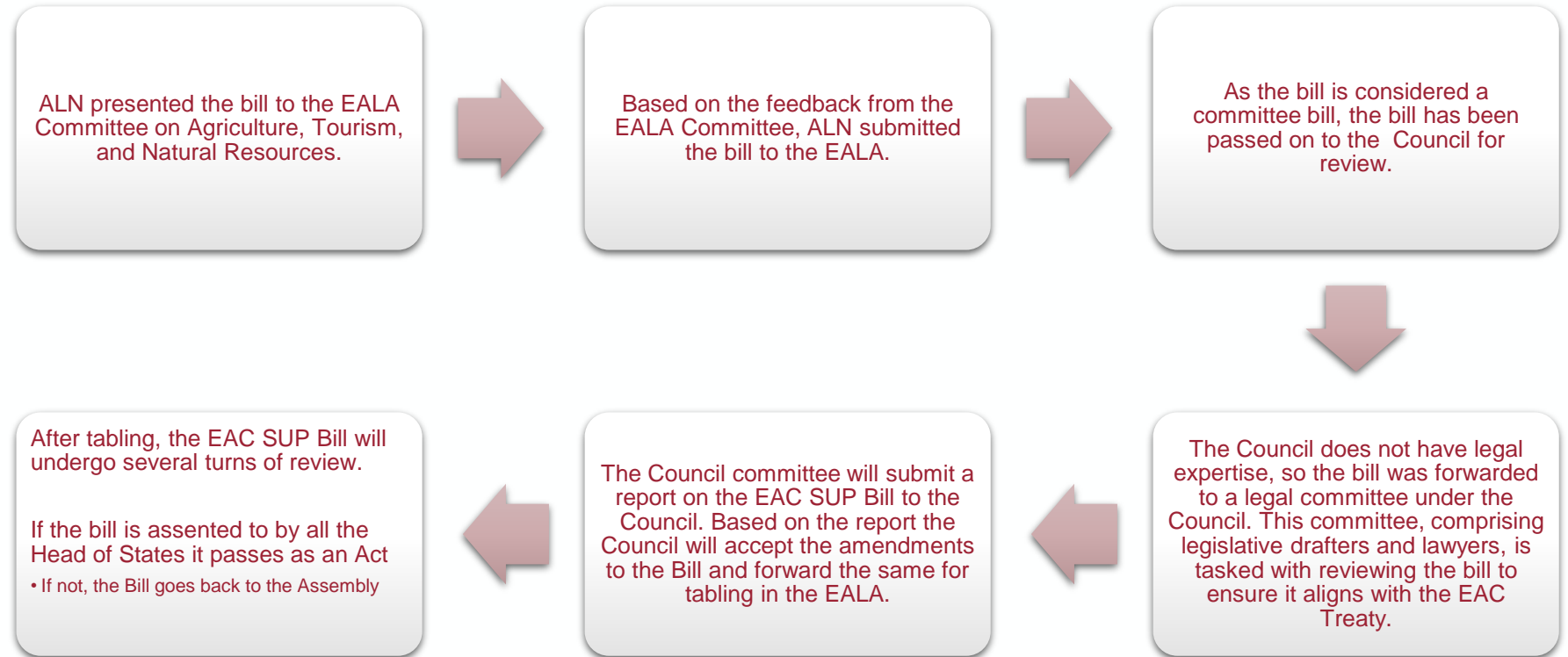
Rationale:

- We have proposed these provisions in order to ensure uniformity throughout the EAC Partner States.
- We anticipate that this uniformity will result in efficient management of single-use plastics and prevent transboundary spilling of the single-use plastics within the EAC.
- The regulations and subsidiary provisions will provide further clarity on the provisions of the Draft SUP Bill. One such provision is the provision on the financing of the initiatives.

KEY CONSIDERATIONS AND QUESTIONS



Next steps- Review process of the Bill



THANK YOU

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